

## Agricultural Marketing Service, USDA

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line” means that an entity must be supplying the retailer with a wide range of products such as the grocery and related nonfood items specified.

(Sec. 1, 46 Stat. 531, as amended; 7 U.S.C. 499a *et seq.*)

[28 FR 7067, July 11, 1963, as amended at 37 FR 14561, July 21, 1972; 44 FR 50575, Aug. 29, 1979; 47 FR 21234, May 18, 1982; 47 FR 47802, Oct. 28, 1982; 49 FR 45739, Nov. 20, 1984; 61 FR 13386, Mar. 27, 1996; 62 FR 15086, Mar. 31, 1997; 65 FR 24854, Apr. 28, 2000; 68 FR 23378, May 2, 2003]

### LICENSES

#### § 46.3 License required.

(a) No person shall at any time carry on the business of a commission merchant, dealer, or broker without a license which is valid and effective at such time.

(b) Separate licenses are required for each person. More than one trade name may be used by the same person only after such trade names have been approved in writing by the Director.

(c) Joint account arrangements between two or more licensees are not considered to result in separate firms and, therefore, do not require separate licenses.

#### § 46.4 Application for license.

(a) Any person who desires to obtain a license shall make application therefor on the currently approved form to be obtained from the Director or his representatives.

(b) The applicant shall furnish the following information:

(1) Name or names in which business is conducted; place of business; mailing address; name, location and number of branches or additional business facilities, divisions or affiliates; name of firm succeeded and whether the applicant assumes responsibility of settling any complaints filed under the Act against the firm succeeded.

(2) Type of business (i.e., wholesale, retail, trucking, processing, commission merchant, or broker), and whether the fruits and/or vegetables handled are fresh or frozen, or cherries in brine.

(3) *Type of ownership.* If a corporation or limited liability company, the applicant shall furnish the month, day, and year incorporated or organized; the

State in which incorporated or organized; the name in which incorporated or organized; and the address of the principal office. A limited liability company shall also furnish a copy of its articles of organization and its operating agreement.

(4) *Full legal name, all other names used, if any, and home address of owner.*

If a partnership, the applicant shall furnish the legal names, all other names used, if any, and home address of all partners, indicating whether general, limited, or special partners. If a limited liability company, the applicant shall furnish the full legal names, all other names used, if any, and home address of all members, managers, officers, directors and holders of more than 10 percent of the ownership stake, and the percentage of ownership in the company held by each such person. If an association or corporation, the applicant shall furnish the full legal names, all other names used, if any, and home address of all officers, directors and holders of more than 10 percent of the outstanding stock and the percentage of stock held by each such person. Minors shall also furnish the full name and home address of their guardian. If the applicant is a trust, the name of the trust and the full name and home address of the trustee must be furnished. If the applicant is a limited liability company and a member or holder of more than 10 percent of the ownership stake is a partnership, another limited liability company, corporation, association, or separate legal entity, the applicant shall furnish the full legal names and home address of that member's partners, members, managers, directors, and officers.

(5) Date when first became subject to the Act. If business was conducted subject to the Act prior to the filing of an application for a license, applicant shall furnish an explanation for such violation as prescribed in section 3(a) of the Act.

(6) Whether the applicant, or in case the applicant is a partnership, any partner, or in case the applicant is a limited liability company, any member, manager, officer, director or holder of more than 10 percent of the ownership stake, or in case the applicant is

an association or corporation, any officer, director, or holder of more than 10 percent of the outstanding stock, has prior to the filing of the application:

(i) Been connected with any firm whose license is under suspension or has been revoked. If so, he shall furnish the name and address of the firm whose license is under suspension or has been revoked and the details of such connection, including the dates thereof;

(ii) Within three years been adjudicated or discharged as a bankrupt or was an officer, director, stockholder, partner, member, manager or owner of a firm adjudicated or discharged as a bankrupt.

(iii) Been convicted of one or more felonies in any State or Federal court. If so, he shall furnish the name and date of birth of the party convicted, alias if any, name, location of court and date convicted, nature of felony, sentence imposed, where and length of time served; if paroled, date parole terminated;

(iv) Ever been licensed under the Act. If so, he shall furnish the name and address of licensee and whether license is still in effect.

(7) Whether any person employed by the applicant has been responsibly connected with any firm whose license has been revoked, or is currently under suspension, or who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2 of the Act, or against whom there is an unpaid reparation award which has been issued within the past two years, subject to his right of appeal. If so, he shall furnish the full legal name of the person, the name of the firm involved, and the details of such connection, including the dates thereof.

(8) Any other information the Director deems necessary to establish the identity and eligibility of the applicant to obtain a license.

(c) The application shall be signed by the owner, all general partners, or in case the applicant is a limited liability company, a member or manager, or in case the applicant is an association, or corporation, a duly authorized officer.

(d) The application and fees shall be forwarded to the Director, Fruit and Vegetable Division, Agricultural Mar-

keting Service, U.S. Department of Agriculture, Washington, D.C. 20250, or to his representative. An application which does not contain full or complete answers to all the questions, or is not properly signed, or not accompanied by the proper fee, or bond as required under paragraphs (c) and (e) of section 4 of the Act shall not be considered a valid application for license. The "period not to exceed 30 days" as prescribed in section 4(d) of the Act shall commence on the day that a valid application for license is received by the Director or his representative.

(e) If the application is incomplete, the Director may return the application to the applicant with a request that the application be completed by furnishing the missing data. If the applicant does not respond to this request within 30 days after it is mailed by the Director, the fees submitted shall be refunded.

(f) If the Director has reason to believe that the application contains inaccurate information, he may afford the applicant an opportunity to submit a corrected application or verify or explain information contained in the application. If the applicant submits a corrected application, the original application shall be considered withdrawn. If the applicant, in response to the Director's request, submits additional or corrected information for consideration in connection with his original application, the original application plus such information shall be considered as constituting a new application.

(g) Fees shall be refunded whenever an application is withdrawn without the filing of a new application.

(h) When a valid application is received and the provisions of paragraphs (b) and (c) of section 4 of the Act are applicable, the Director shall notify the applicant by letter of the pertinent provisions of this section and the reasons for denial of license and shall refund the fee.

(i) If the Director disapproves the use of a trade name which, in his opinion, is deceiving, misleading or confusing to the trade, he shall return the application to the applicant for the selection of a different trade name. If the applicant does not return the application

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within thirty days after it was mailed by the Director, the fees submitted shall be refunded. The “period not to exceed thirty days” as prescribed in section 4(d) of the Act shall commence on the date that the application for license under the new name is received by the Director or his representative.

[28 FR 7067, July 11, 1963; 28 FR 7287, July 17, 1963, as amended at 44 FR 50575, Aug. 29, 1979; 65 FR 24854, Apr. 28, 2000]

### § 46.5 Bonds.

Bonds prescribed in section 4(c)(6), 4(e), 8(b), and 13(b) of the Act shall be in the form of cash or surety bonds in the form and amount satisfactory to the Director and shall not be less than \$10,000. When cash is posted as surety, it shall be deposited into a special account of the United States Treasury and no interest is to accrue or be paid the licensee. When surety bonds are furnished, the surety shall be a company holding a certificate of authority from the Secretary of the Treasury under Act of Congress approved July 30, 1947 (6 U.S.C. 6 through 13) as acceptable surety on Federal bonds.

[44 FR 50575, Aug. 29, 1979]

### § 46.6 License fees.

(a) For retailers and grocery wholesalers making an initial application for license, the license fee is as follows:

(1) During the period November 15, 1995 through November 14, 1996, the license fee is \$400 plus \$200 dollars for each branch or additional business facility operated by the applicant in excess of nine. In no case shall the aggregate annual fees paid by any retailer or grocery wholesaler during such period exceed \$4,000.

(2) The license fee during the period November 15, 1996 through November 14, 1997, is \$300 plus \$150 for each branch or additional business facility operated by the retailer or grocery wholesaler in excess of nine. In no case shall the aggregate fees paid by any retailer or grocery wholesaler during such period exceed \$3,000.

(3) The license fee during the period November 15, 1997 through November 14, 1998, is \$200 plus \$100 for each branch or additional business facility operated by any retailer or grocery wholesaler

in excess of nine. In no case shall the aggregate fees paid by any retailer or grocery wholesaler during such period exceed \$2,000.

(4) Any retailer or grocery wholesaler making an initial license application during the 3-year phase-out period shall pay no fee for renewal of the license for subsequent years.

(5) A retailer or grocery wholesaler that holds a license as of November 15, 1995, shall pay the license fee required in paragraphs (a) (1), (2), and (3) of this section for the renewal of the license during the phase-out period.

(6) No license fee will be required after November 14, 1998 for making an initial application for, or for renewal of a license by a retailer or grocery wholesaler. However, a retailer or grocery wholesaler making an initial application for a license after November 14, 1998, shall pay a \$100 administrative processing fee.

(b) For commission merchants, brokers, and dealers (other than grocery wholesalers and retailers) the annual license fee is \$550 plus \$200 dollars for each branch or additional business facility in excess of nine. In no case shall the aggregate annual fees paid by any such applicant exceed \$4,000.

(c) The Director may require that fees be paid in the form of a money order, bank draft, cashier's check, or certified check made payable to “USDA-AMS”. Authorized representatives of the Division may accept fees and issue receipts.

[62 FR 43455, Aug. 14, 1997]

### § 46.7 Issuance of license.

Upon receipt of a valid application accompanied by the proper fee for a license, and bond, if required, the Director shall, if the applicant is found to be eligible, issue a license certifying that the licensee is authorized to engage in the business of a commission merchant, dealer, or broker. All fees, and any additional sums assessed by the Director in accordance with the Act, shall be deposited in a special fund designated as the “Perishable Agricultural Commodities Act fund.”

### § 46.8 Copies of licenses.

Copies of licenses may be issued upon request and upon the payment of a fee